

**THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY**

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**WRIT PETITION No. 25626 OF 1998**

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**Dated 4<sup>th</sup> April, 2007**

Between:

The Regional Provident Fund Commissioner,  
Hyderabad.

...Petitioner

And

The Employees Provident Fund Appellate  
Tribunal, 7<sup>th</sup> Floor, Skylark Building,  
Nehru Place, New Delhi – 110 019 and another.

...Respondents.

**ORDER:**

In this writ petition, the petitioner – Regional Provident Fund Commissioner, Hyderabad has questioned the order passed by the Employees Provident Fund Appellate Tribunal dated 23.7.1998 in Case No.ATA/1(6)/97 setting aside the order of the primary authority under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

The Natural Resources Development Cooperative Society Limited is a registered cooperative society under the provisions of the Andhra Pradesh Co-operative Societies Act, 1964. The members of the said society are all post-graduate scientists, geologists and geophysicists and they render services in finding out underground water for sinking wells and tube-wells. The said society was brought under the purview of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short “the Act”) with effect from 1.7.1988 provisionally vide letter No.AP/17885/Z.VI/Enf 1-3/181/456/270, dated 30.8.1988 wherein it is stated that the services offered by the second respondent-society herein would fall within the definition of “Expert Service” and as such, it is required to comply with the provisions of the schemes framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. In response to the coverage intimation in Lr.No.AP/17885/Z.VI/Enf/1-3/181/456/270, dated 30.8.1988, the second respondent society had rendered an amount of Rs.2,77,962/- towards the provident fund and other dues from July, 1988 to 1989. But, however, when the provisional coverage was confirmed with effect from 31.10.1986, the management of the

society disputed the coverage of the society, mainly, on the ground that as per the bye-laws of the society, each member is a shareholder and it amounts to self-employment. It is stated that the unemployed people have come together and formed a cooperative society to help themselves by creating employment opportunity and as such, it would not come within the purview of the Act. Much correspondence was exchanged between the society and the petitioner organization and apart from the said ground, the society had also taken a plea that it will not fall within the meaning of "Expert Service" so as to cover their organization within the purview of the Act. The primary authority by order dated 23.5.1997 had elaborately dealt with the objections of the petitioner and verified the books of accounts of the society. During the verification of the books and ledgers, it was noticed that salaries had been paid to the non-member employees numbering about 19 to the tune of Rs.6,000/- and member-employees numbering about 100 to the extent of Rs.96,000/-. It is stated that some of the members were also employed and drawing wages from the society, and if their number is taken along with the non-member employees, it is above 20 and as such, the society is covered for implementation of the provisions of the Act. Even with regard to the objection of the second respondent-society that their services will not fall within the explanation "Expert Service" as notified by the Government of India in GSR No. 731, dated 17.5.1971, the primary tribunal having regard to the objects of the society stated in bye-law No.4 recorded a finding that it falls within the category of establishment involved in the business of supply of personnel. The primary tribunal held that some of the work brought out in the bye-laws is rendered to the individuals like exploration of ground water resources, but other services are definitely rendered to the factories and establishments and hence it can be under the purview of the Act under the

Scheduled Head "Expert Service" as notified under GSR No. 731 dated 17.5.1971. Overruling the said objection of the society, the primary authority held that the Act being a social security piece of legislation, the provisions have to be construed liberally to benefit the working class employees. Thus holding, the primary authority in exercise of powers under Section 7-A(1)(a) of the Act ordered that the second respondent-society is covered under Section 1(3)(b) of the Act with effect from 31.10.1986 and consequently directed the management of the society to comply with the provisions of the Act and schemes framed thereunder within a period of 15 days from the date of the receipt of the order.

As against the said order of the primary authority, the second respondent-society preferred appeal in Case No.ATA/1(6)97. The appeal was preferred mainly on the ground that the members of the society have constituted themselves into a registered society for self-employment and the self-employed persons cannot be said to be employees within the definition of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and other staff members are less than 20. Therefore, the establishment cannot be covered under the provisions of the Act. The appellate tribunal recorded a finding that under the A.P.Cooperative Societies Act, a member cannot have any interest in the business of the society and as soon as he acquires any interest in the business of the society, he becomes disqualified to remain as a member by placing reliance on a judgment of Orissa High Court wherein it was held that a member of the society cannot remain as a member as well as an employee of the society. It further held that by mere registration under an Act, the real characteristic of the association would not change. By further recording a finding that there is nothing like a society, which employs them and pays them and it is only a pool of expertise services, which is not notified as an establishment

covered under the Act, the appellate tribunal allowed the appeal and set aside the order passed by the primary authority.

In this writ petition, it is submitted by Shri R.N.Reddy, learned counsel appearing for the petitioner that the appellate tribunal has not considered the various important aspects while setting aside the order passed by the primary authority. It is submitted that when such a society is registered, it is a corporate body and on the ground that some members employed by the society are also taken into account for the purpose of extending the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, it cannot be said that the member-employees cannot be termed as employees and the number of employees is below 20, thereby, disabling the society to be covered under the Act. It is further submitted that once a society is registered, it cannot be termed as association of members. It is also submitted that as much as the very reading of the bye-laws indicates that they are rendering expert services in the field of geophysical consultancy services, they fall within the definition of 'expert service' as notified in GSR No. 731 dated 17.5.1971.

On the other hand, Shri Ch.N.Meher Baba representing Shri V.Prabhakar Rao, learned counsel for the respondents, reported no instructions in the matter. No counter affidavit has also been filed on behalf of the respondents.

In this case, it is not in dispute that the second respondent-society was registered under the Andhra Pradesh Cooperative Societies Act, 1964 and under Section 9 of the Andhra Pradesh Cooperative Societies Act, the registration of a society shall render it a body corporate by name under which it is registered having perpetual succession and common seal. The emergence of the body corporate is automatic and is by operation of law. The moment a society is registered under Section 6, a body corporate

automatically comes into being. The body corporate ceases to exist when the registration is cancelled and the very effect of incorporation is to protect individual members. Differentiating the individuals from the society, it is incorporated as a body. A society which is registered and incorporated is a statutory form of organization and it owes its existence to the legislature of the State by which it is organized i.e. the A.P.Co-operative Societies Act, 1964. In that view of the matter, the finding recorded by the appellate tribunal that by registration under an Act, the characteristic of association is not changed and the society is nothing but an association of unemployed scientists, does not appear to be sound and is not in accordance with the provisions of the A.P.Co-operative Societies Act, 1964. Even with regard to expert services, though it was not there initially, but through notification dated 7.5.1977 rendering of such expert services like supply of personnel etc. is brought within the purview of the Act with effect from 31.5.1977 and several clauses in the bye-laws of the society were to be considered before recording any finding that rendering such service will not fall within 'expert service'. But, however, the appellate tribunal did not consider several important aspects on this issue and bye-laws and objects and reasons of formation of society vis-à-vis the provisions of the notification issued under the Employees Provident Fund and Miscellaneous Provisions Act. In **M.W.C.P. & Society Ltd. V. R.P.F.Commr.& Ors.**<sup>[1]</sup>, on which reliance has been placed by the learned counsel for the petitioner, a learned Single Judge of Madras High Court held that when members of cooperative society do work in connection with that of society and they are paid wages, there exists employer and employee relationship for the purpose of extending the provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952.

Even the finding that a member cannot have an interest in any

of the activities of the society and as soon as he acquires any interest in the business of the society, he becomes disqualified to remain as a member is also not properly considered. The A.P. Cooperative Societies Act, 1964, under which the second respondent-society was registered, provides disqualification for a person to be admitted as member and for being a member if he is a paid employee of the society or of its financing bank or of any society for which it is the financing bank and, this disqualification of a member-employee to be a member of the society is also removed by Section 21(2) of the Act, if the society has as its principal object the provision of employment to its members.

Section 21-A of the A.P. Cooperative Societies Act also makes a person ineligible for being chosen as and for being a member of the committee of a society, if he acquires any interest in any subsisting contract made with or work being done for the society, except as otherwise prescribed. Therefore, both the prohibitions contained in the A.P. Cooperative Societies Act, 1964 do not appear to have any application to the instant case inasmuch as the very Act permits a member of a society to be an employee of a society which has as its principal object the provision of employment to its members and every member of the society will naturally have interest in the business of the society and there is no element of acquiring interest in any subsisting contract made with or work being done for the society, which disqualifies a member to be a member of the committee.

Though there is appearance on behalf of the respondents, no counter affidavit is filed and the learned counsel reported no instructions.

For the reasons stated above, I am of the considered opinion that the appellate Tribunal did not consider the various aspects in proper perspective and the matter requires reconsideration by the

appellate Tribunal. Accordingly, I set aside the order passed by the appellate tribunal and remit the matter back to the first respondent herein for consideration afresh in the light of the observations made above after issuance of a notice of hearing to the parties.

The writ petition is allowed to the extent indicated above. No costs.

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**R.SUBHASH REDDY, J.**

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[\[1\]](#) ILLJ High Court, Madras, 824